

CA 06-165E

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MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

| | | | |
|--|--|--|--|
| United States District Court | | District OF PENNSYLVANIA | |
| Name (under which you were convicted): JOHN COOLEY | | Docket or Case No.: 02-40 | |
| Place of Confinement: USP-HAZELTON | | Prisoner No.: 20139-068 | |
| UNITED STATES OF AMERICA | | Movant (include name under which you were convicted) JOHN COOLEY | |
| v. | | | |

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA
- (b) Criminal docket or case number (if you know): 02-40
2. (a) Date of the judgment of conviction (if you know): FEBRUARY 25, 2004
- (b) Date of sentencing: October 18, 2005
3. Length of sentence: LIFE
4. Nature of crime (all counts): CONSPIRING TO DISTRIBUTE COCAINE IN VIOLATION OF 21 U.S.C. § 846, ONE COUNT INDICTMENT.

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JUL 20 2006

5. (a) What was your plea? (Check one)

(1) Not guilty ☒

(2) Guilty ☐

(3) Nolo contendere (no contest) ☐

**CLERK U.S. DISTRICT COURT
WEST DIST OF PENNSYLVANIA**

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? N/A
6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☒

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:
- (a) Name of court: UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
- (b) Docket or case number (if you know): 05-4735
- (c) Result: RESENTENCED AND A LIFE SENTENCE IMPOSED AGAIN.
- (d) Date of result (if you know): OCTOBER 18, 2005
- (e) Citation to the case (if you know): UNPUBLISHED
- (f) Grounds raised: WHETHER THE DISTRICT COURT'S DETERMINATION OF FACTS AT SENTENCING, NOT FOUND BY THE JURY OR ADMITTED BY THE DEFENDANT, AND SUBSEQUENTLY RELIED UPON TO IMPOSE A LIFE SENTENCE, VIOLATED THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION. WHETHER THE LIFE SENTENCE IMPOSED AGAINST JOHN H. COOLEY, Jr., BY THE DISTRICT COURT, WAS AND IS UNREASONABLE?
- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒
- If "Yes," answer the following:
- (1) Docket or case number (if you know): N/A
- (2) Result: N/A
- (3) Date of result (if you know): N/A
- (4) Citation to the case (if you know): N/A
- (5) Grounds raised: N/A
10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court? Yes ☐ No ☒
11. If your answer to Question 10 was "Yes," give the following information:
- (a) (1) Name of court: N/A
- (2) Docket or case number (if you know): N/A
- (3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A
 (5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒ N/A

(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒ N/A

(2) Second petition: Yes ☐ No ☒ N/A

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: Due to ineffective assistance of counsel

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: INEFFECTIVE ASSISTANCE OF COUNSEL.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(Please SEE ATTACHED MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION UNDER 28 U.S.C. § 2255)

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Due to ineffective assistance of counsel.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Due to ineffective assistance of counsel.

GROUND TWO: DEFENDANT IS ACTUALLY INNOCENT OF THE CHARGE OF CONSPIRACY.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(Please See attached MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION UNDER 28 U.S.C. § 2255)

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Due to ineffective assistance of counsel.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Due to ineffective assistance of counsel.

GROUND THREE: PROSECUTORIAL MISCONDUCT.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
(PLEASE SEE ATTACHED MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION UNDER 28 U.S.C. § 2255).

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Due to ineffective assistance of counsel.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Due to ineffective assistance of counsel.

GROUND FOUR: THE TRIAL/SENTENCING COURT LACKED JURISDICTION WHEN IT JUDICIALLY AMENDED THE INDICTMENT REGARDING ENHANCEMENT.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(Please see attached Memorandum of Points and Authorities
In Support of Motion Under 28 U.S.C. § 2255).

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Due to ineffective assistance of counsel.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Due to ineffective assistance of counsel

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: As to trial counsel ineffectiveness, appellate counsel failed to present in the record errors and omissions on direct appeal. Grounds 1,2, and 3 was never presented.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒
 If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: DENNIS WILLIAMS/ ADDRESS UNKNOWN

(b) At arraignment and plea: SALLY A. FRICK, 1510 FRICK BUILDING, PITTSBURGH, PA 15219

(c) At trial: SALLY A. FRICK, SAME AS ABOVE
SENTENCING: SALLY A. FRICK: SAME AS ABOVE

FIRST APPEAL ~~XXXXXXXXXX~~ ANTHONY T. McBETH, 407 NORTH FRONT STREET, FIRST FLOOR, HARRISBURG, PA 17101

(e) On appeal: BRUCE SANDMIRE , UNKNOWN AT THIS TIME.

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒ N/A

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion. * This is the Defendant's First initial § 2255 motion.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

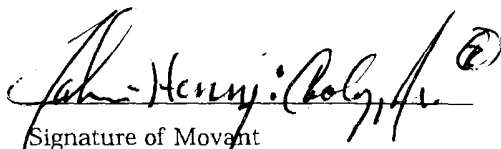
Therefore, movant asks that the Court grant the following relief: _____

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 7-
18-06 (month, date, year).

Executed (signed) on 7-18-06 (date).


Signature of Movant
JOHN COOLEY # 20139-068

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. _____

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

DATE: 7-18-06

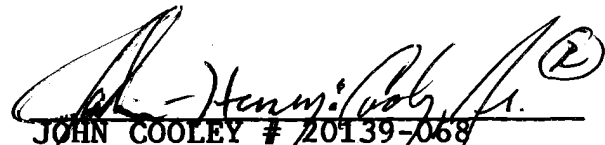
Dear Clerk of the Court:

Could you please file the enclosed documents within your court as soon as possible.

In closing, I would like to thank you for your time and attention into this matte.

JC/jc
enclosures

Sincerely,

A handwritten signature in black ink, appearing to read "John Cooley", with a circled number "2" to the right.

JOHN COOLEY # 20139-068
UNITED STATES PENITENTIARY-HAZELTON
P.O. BOX 2000
BRUCETON MILLS, WV 26525